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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

SUSAN BIHLMAN, Plaintiff and Respondent, v. CHARLENE ANN BRAGA, Defendant and Appellant.	C084905 (Super. Ct. No. CVCS13-0002224)

This appeal arises out of the sale of a single-family dwelling with a walnut orchard on approximately four acres in Sutter County. The property has been owned by the Bihlman family since the 1870's. After Georgene Bihlman died in 2010, her registered domestic partner, Charlene Ann Braga, proposed to sell the property to Greg and Susan Bihlman.[1] Charlene proposed the sale, set the price, drafted the purchase agreement, and

[1] We refer to the parties by their first names due to shared surnames by some of the parties.

signed the purchase agreement. Greg's unexpected death appears to have caused Charlene to have a change of heart. Charlene reneged on the purchase agreement. Susan brought this action and Charlene filed a counterclaim. The trial court granted specific performance, compensation for lost walnut crop profits, and attorney fees to Susan. The trial court rejected the causes of action in Charlene's cross-complaint. Charlene appeals.

On appeal, Charlene contends (1) the evidence did not show that a contract for sale of the Bihlman property was ever formed between the parties, (2) Susan was not entitled to specific performance, (3) the trial court ignored Charlene's rights as a registered domestic partner of Georgene in awarding to Susan all profit from the walnut crops for the period from 2013 to 2015, and (4) the trial court abused its discretion in awarding attorney fees and costs to Susan.

We determine that, contrary to Charlene's obligation to set forth the facts in the light most favorable to the judgment, she has minimized or ignored the evidence supporting the trial court's judgment. Based on the evidence in the record, we conclude substantial evidence supports the trial court's finding of contract formation between the parties as well as Charlene's breach of the purchase agreement. Under Civil Code section 3387, Susan was entitled to specific performance for this purchase of a single-family dwelling. Charlene's assertion of discrimination by the trial court based on her domestic partnership with Georgene is unfounded. Rather than showing bias by the trial court, the record establishes that the award of walnut crop profits to Susan was proper. We deem Charlene's argument regarding attorney fees to be forfeited due to deficient briefing. Accordingly, we affirm the judgment and the order granting attorney fees and costs.

FACTUAL AND PROCEDURAL HISTORY

In summarizing the factual record, we recount the facts in the light most favorable to the judgment. (*Myers v. Trendwest Resorts, Inc*. (2009) 178 Cal.App.4th 735, 739.)

Residential Purchase Agreement

The Bihlman property consists of a farmhouse and a walnut orchard located on approximately four acres in Sutter County. The farmhouse was built by Greg's great-great-grandparents in the 1870's. In the 1970's, Georgene acquired the property from her parents. In the early 1990's, Greg expressed interest in buying the property from Georgene. In 1994, Georgene and Charlene began living together in a relationship that included registering as domestic partners.

In 2007, Georgene transferred 1.75 acres to Greg as part of an oral agreement. In exchange, Greg agreed to plant walnut trees on the transferred acreage as well as three acres remaining with Georgene, provide the labor, and split the profits from the walnuts on the Bihlman property with Georgene.

Georgene died in 2010 and Charlene became successor trustee to Georgene's estate. Greg and Susan continued to maintain the walnut orchard on the Bihlman property. In December 2010, Charlene transferred title to the Bihlman property into her own trust. After Georgene's death, Charlene received an appraisal for the property and informed Greg that she would offer it to him before listing it on the market for sale. Greg and Susan attempted to get a farm loan to finance the purchase, but financing eluded them.

In June 2012, Charlene sent Greg a Father's Day card. In pertinent part, Charlene wrote: "You want the house and I want you and Suzie to have it. What if we say you inherited half & just buy me out of the other half of the value when Genie died – that would be $165K. I'm willing to work anything out that will help. I cannot afford to maintain & keep two houses nor do I need two." Greg and Susan excitedly discussed the offer. One week later, Greg was diagnosed with pancreatic cancer.

In mid-July, Greg and Susan agreed to a deal to purchase the property with a loan financed entirely by Charlene. Greg asked Charlene to write up the terms. Charlene

conducted about 20 hours of research on the internet and drafted a purchase agreement, a contract for deed, and a real estate transfer disclosure statement.

The purchase agreement described the Bihlman property, set the sales price at $165,000, specified Charlene would finance the sale at 3.5 percent interest, and stated the date for close of escrow as October 31, 2012. Charlene drafted a section titled, "Seller Disclosures with Cancellation Rights" that enumerated her duties to disclose information about the property, but without actually mentioning cancellation rights for any party. Under a section titled, "Time for Acceptance of Offer and Counteroffers," Charlene drafted a term that states: "The 'Acceptance' date shall be the date when the last of either the Buyer or Seller signs or initials this offer or the final counteroffer."

The purchase agreement also provides for specific performance as follows: "If Seller fails to comply with any other part of this Agreement, Seller will be in breach, and Buyer may (a) seek specific performance, or elect to receive the return of all deposit made by Buyer, without waiving any rights to seek damages resulting from Seller's failure to perform the terms of this Agreement." The agreement contains a fee-shifting clause providing attorney fees to the prevailing party in any action arising out of the agreement. The agreement contained "Special Clauses" portion that stated, in pertinent part: "House sold as-is. Buyer has agreed to repair the woodpecker damage and siding damage due to lack of flashings on the window sills of the South wall in exchange for a[n] antique cedar chest." Immediately above the parties' signatures, the agreement stated that "[t]his document is intended as a legally binding Agreement . . . ."

Charlene, Susan, and Greg signed the agreement on July 28, 2012. The parties signed the disclosure statement on the same day. However, the contract for deed was not signed by any of parties. There was no discussion regarding the unsigned contract for deed.

Possession of the Bihlman Property and Offer of Tender

Soon after the parties signed the agreement, Charlene gave a key to the farmhouse to Susan and Greg. Susan and Greg agreed to keep the yard watered and take over the utilities. After a delay for Greg's chemotherapy treatments, Susan and Greg moved into the farmhouse. Greg died in October 2012. Susan incurred $27,244 in expenses for repairs to the farmhouse.

After Greg's death, Susan consulted with an attorney on matters related to the settling of Greg's estate and the purchase of the Bihlman property. Susan's attorney ended up sending a copy of the agreement to an escrow company to open an escrow transaction. According to a timeline of events prepared by Charlene, Susan called on October 30, 2012. Charlene noted, "No mention of the papers [promised to be delivered from Susan's attorney]. Again, I had to ask and she said something about going to a Title Company. I suggested that she rent to allow more time to complete the sale transaction. She agreed." Susan testified that Charlene expressly gave her "more time to get the paperwork done" to prepare for opening an escrow transaction. Charlene did not impose a deadline to get the paperwork done. Also on October 30, 2012, Charlene sent a rental agreement to Susan. Charlene and Susan agreed Susan would begin paying $750 per month in rent starting on November 1, 2012. At the time, Charlene and Susan anticipated Susan still required financing to complete the purchase of the property.

On November 26, 2012, Charlene wrote to Susan that the "rental agreement will stay in effect from month-to-month, until purchase paperwork is agreed upon and processed. [¶] There is also a problem with the [purchase agreement] signed July 28, 2012. Pursuant to this Agreement, Buyer failed to: 1) provide financing terms as laid out in Clause 2 of the RPA and 2) failed to repair the South wall as stated in Special Clauses, Section 5" of the purchase agreement. Charlene's letter continued: "Based on the above, Seller may terminate the original [purchase agreement] as stated in Clause 13. However, rather than terminating the original [purchase agreement], I, the Seller, have enclosed an

'Amended Agreement', for your review and approval." Charlene's letter concluded: "If I do not hear from you within 5 days, then this letter will serve as notice of cancellation of the original [purchase agreement] and we will merely continue with the rental agreement until we both decide to work on a new purchase agreement."

On November 28, 2012, Susan deposited $301,444.97 that she received from Greg's life insurance into her bank account. On December 1, 2012, Susan communicated to the Charlene that she was ready to pay cash for the farmhouse and it was Greg's wish for her to use the life insurance proceeds to that end. Charlene responded, "if that's what you want." They agreed on a plan to go to the title company on December 10, 2012, to complete the transaction. Charlene did not demand an amended agreement. Thereafter Susan called Charlene several times but was unable to reach her. Susan became worried about Charlene because she had previously always been able to reach Charlene.

On December 14, 2012, Charlene complained in a letter to Susan about their lack of communication. Her letter demanded that Susan continue to pay rent while the transaction was pending. On January 4, 2013, Charlene continued complaining of the lack of communication and demanded a meeting with Susan to "sort some things out." (Boldface & underscoring omitted.) Charlene noted the January 2013 rent was due. The letter also stated: "Sorry about the delay. However, if the sale had been settled by October 31st like it was supposed to be, *and I intended it to be*, we would not be encountering the delays now." (Italics added.)

Charlene Reneges on the Residential Purchase Agreement

In mid-December 2012, the tenor of Charlene's communications changed from her focus on a quick closing of the sale. On December 14, 2012, Charlene wrote a letter to Susan in which she demanded: "WE NEED TO HAVE A MEETING BEFORE GOING TO ANY TITLE COMPANY. [¶] I DO NOT LIKE HOW THE LINES OF COMMUNICATION HAVE TRANSPIRED THESE PAST TWO MONTHS AND I WILL NOT DO ANY BUSINESS UNTIL WE HAVE A MEETING." (Boldface &

underscoring omitted.) Charlene's notes reflected that on "January 4, 2013 Susan called and left a message at 10:53 am. She said she wanted to know when we could meet to go to the Title company to close this transaction." On January 18, 2013, Charlene and Susan met. Charlene's notes indicated: "Met with Susan in Gridley and at the ranch house. Gave her the 'Issues to be sorted' and 'Timeline of events'."

In mid-January 2013, Susan told Charlene that she did not want to keep paying rent on the property. Charlene responded, "[W]ell, it's going to the purchase so don't worry about it." Based on this reassurance, Susan did not have any more concerns about paying the rent/purchase price. On February 9, 2013, Charlene received rent payment from Susan but noted that "[n]o mention was made of the 'Issues to be Sorted.' "

In a letter dated February 15, 2013, Charlene sent a letter to Susan with an AT&T final bill "and request for new written offer." This letter represented Charlene's repudiation of the purchase agreement. In its statement of decision, the trial court found Charlene's "letter of February 15th formally repudiated the [purchase agreement] by explicitly refusing to proceed with the sale, as agreed. Instead, [Charlene] demanded that [Susan] present a 'new written offer.['] The Court finds [Charlene's] letter evidenced a total repudiation of her contractual obligations to convey the property to [Susan], who remained ready, willing and able to close the transaction."

The trial court further found that after Charlene repudiated the purchase agreement, "attorneys for both parties exchanged a series of letters for a few months, while [Charlene] proceeded to harass [Susan] by filing a police report . . . accusing her of criminal behavior in clearing out and pruning some diseased and overgrown shrubs and trees." Susan testified that Charlene told the police that Susan "was destroying her property." The activity that triggered Charlene's report to the police was Susan's removal of dead wood that had fallen from the trees after "a pretty heavy winter." The trial court further found, "When the attempt to have the police intervene failed, [Charlene] then threatened to evict [Susan] from the Bihlman Property." Faced with the

threat of eviction, Susan vacated the Bihlman property in September 2013. Susan brought this action shortly thereafter.

DISCUSSION

I

Contract Formation

Charlene argues that no valid contract to sell the property was ever formed between the parties. The argument lacks merit.

A.

Principles of Review

On appeal, we begin with the presumption that the trial court's judgment is correct, and "all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) In an appeal from a judgment entered after a bench trial, we review questions of law under the independent standard of review. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).) The proper interpretation of a contract presents a question of law. (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 647.)

Here, Charlene denies the existence of a valid contract to sell the Bihlman property to Susan. "[T]he existence of the contract is a question of fact, and we must uphold the trial court's finding if supported by substantial evidence." (*Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 772.) "Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson, supra*, 6 Cal.App.5th at p. 981.) The testimony of a single witness may constitute substantial evidence in support of a finding. (*Ibid*.) "The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment." (*Fladeboe v. American Isuzu Motors Inc*. (2007) 150

Cal.App.4th 42, 58.) On appeal, we do not reweigh the evidence presented at trial or attempt to evaluate witness credibility. (*Thompson,* at p. 981.)

B.

Elements of Contract for Sale of Real Property

A contract for sale of real property must be made in writing. (Civ. Code, § 1624, subd. (a)(3); *House of Prayer v. Evangelical Assn. for India* (2003) 113 Cal.App.4th 48, 53.) However, no particular form of writing is required. As the California Supreme Court has explained, " 'An agreement for the purchase or sale of real property does not have to be evidenced by a formal contract drawn with technical exactness in order to be binding.' (*King v. Stanley* (1948) 32 Cal.2d 584, 588 (*King*).) '. . . The material factors to be ascertained from the written contract are the seller, the buyer, the price to be paid, the time and manner of payment, and the property to be transferred, describing it so it may be identified [citations].' (*Id*. at pp. 588-589.)" (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349 (*Patel*).) After contract formation, the parties' conduct may shed light on which terms they considered to be essential. (*Id.* at p. 351.) "However, few contracts would be enforceable if the existence of subsequent disputes were taken as evidence that an agreement was never reached." (*Id.* at pp. 351-352.)

C.

Valid Purchase Agreement

Viewing the evidence in the light most favorable to the judgment, we conclude the trial court had ample basis for concluding the parties formed a valid purchase agreement. The purchase agreement identified Charlene as the seller, and it identified Susan and Greg as the buyers. The "price to be paid . . . at closing" was listed as $165,000. The payment was to be made in the form of "a promissory note from Buyer to Seller for $165000, bearing 3.5% interest . . . ." The purchase agreement stated escrow would close on October 31, 2012. The subject property was identified by its street address and city.

In short, the purchase agreement contained all of the essential elements of a contract for sale of real property. (*Patel, supra,* 45 Cal.4th at p. 349.)

The purchase agreement contained more than the basics required of a valid contract for sale of real property. The purchase agreement admonished the signatories to "[p]lease read carefully" the terms because "[t]his document is intended as a legally binding Agreement . . . ." Immediately above Charlene's signature, the purchase agreement declared that "Seller accepts this offer . . . ." Underneath the parties' signatures, the purchase agreement bears the date of July 28, 2012. Consequently, the parties entered into a binding purchase agreement for the sale of the Bihlman property on that date.

Charlene argues there was no meeting of the minds because Susan and Greg rejected the contract for deed. We disagree. The contract for deed was proposed by Charlene but was never signed any anyone. At most, the "contract for deed" might have provided supplemental information to the purchase agreement because it added details about the financing for the property. The contract for deed echoed the purchase agreement in noting the purchase price was $165,000 to be financed with a loan by Charlene at 3.5 percent interest. Thus, the information was merely redundant to the purchase agreement. That the contract for deed might have added details about the specifics of payment, how interest would accrue, whether prepayment would be allowed, and how late payments would be handled does not invalidate the purchase agreement. As we explained above, the purchase agreement contained all of the essential terms required for a real estate sale.

For this reason, we also reject Charlene's assertion there was no meeting of the minds on the terms of the sale. The contract for deed was not necessary to set forth the essential terms of the agreement for the sale of the Bihlman property. As to the essential terms of the purchase agreement, all parties were in agreement. In addition to the signatures of Charlene, Susan, and Greg on the last page of the agreement, the document

also bore their initials on every page. The purchase agreement by itself sufficed to cement the terms of the sale.

Charlene also argues there was no agreement because the parties disagreed on splitting the profits from the walnut crop. Charlene relies on her January 2013 statement to Susan that "splitting of the walnut crop was 'additional consideration' " for the purchase. The walnut crop was not additional consideration. The purchase agreement was silent regarding the walnut trees. Charlene's attempt to improve the agreement in her favor after its formation does not undermine the validity of the purchase agreement on the date that all parties signed it.

Our conclusion that the parties entered into a valid contract on July 28, 2012, obviates the need to consider Charlene's exhaustive tracing of subsequent events to argue the parties did not thereafter form an agreement to sell the Bihlman property. Notably, Charlene's tracing of subsequent events to the signing of the purchase agreement seeks to extract disagreement in a manner at odds with the standard of review that requires us to view the evidence in the light most favorable to the judgment. Specifically, Charlene's argument ignores her own statements by which she repeatedly reaffirmed the purchase agreement. These include Charlene's own notes that on October 30, 2012, she expressly allowed Susan more time "to complete the sale transaction," and on November 26, 2012, she was allowing Susan to rent the property until the sale was completed. On December 1, 2012, Charlene expressed agreement to accept payment in cash from Greg's life insurance and settled on a date to go to the escrow company to sign papers. Even as late as January 4, 2013, Charlene complained to Susan about the problems that had developed because the sale was not yet completed as "it was supposed to be." Charlene's subsequent conduct was consistent with the parties' understanding the purchase agreement was a valid contract.

In sum, the parties entered into a legally binding purchase agreement on July 28, 2012 that required Charlene to sell the Bihlman property.

II

Specific Performance

Charlene asserts the trial court erred in ordering specific performance because "no contract was ever formed." Anticipating our conclusion that the purchase agreement constituted a valid contract for sale of the Bihlman property, Charlene alternatively argues that "the remedy of specific performance was still not available to force [her] to sell the Property for less than half its value and rescind the 2007 contract relating to the walnut crop which grew on the Property." We reject the argument.

A.

Availability of Specific Performance

Specific performance is a remedy for breach of contract. (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 49.) Specific performance "is given in land sale contracts because it is assumed every piece of property is unique and that the buyer's remedy by way of damages is inadequate." (*Glynn v. Marquette* (1984) 152 Cal.App.3d 277, 280, citing Civ. Code, § 3387.) As relevant to this case, Civil Code section 3387 provides that "[i]t is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation. *In the case of a single-family dwelling which the party seeking performance intends to occupy, this presumption is conclusive*." (Civ. Code, § 3387, italics added.) As our colleagues in the Fourth District have noted about Civil Code section 3387, "This statute was enacted in its present form in 1984. (Stats. 1984, ch. 937, § 1, p. 3177.) Before this time, the statute imposed a presumption that damages were inadequate without specifying whether it was conclusive or rebuttable. In enacting the amendment, the Legislature intended to clarify that the presumption was a rebuttable presumption, but to add a conclusive presumption for residential property that is to be occupied by the buyer." (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 473, fn. 2.)

The presumption of Civil Code section 3387 for sale of property other than single-family dwellings intended to be occupied by the buyer may be rebutted by proof that monetary damages constitute an adequate remedy. For example, in *Jessen v. Keystone Savings & Loan Assn*. (1983) 142 Cal.App.3d 454, borrowers showed a lender had only a monetary interest in apartments that it financed. (*Id.* at p. 456.) The lender did not intend to occupy the apartments, but only to sell them to satisfy the outstanding debt. (*Id.* at p. 457.) By showing only a monetary interest in the real property, the borrowers rebutted the presumption of irreparable injury unless transfer of the real property were ordered through specific performance. (*Id.* at pp. 456, 459.)

B.

The Bihlman Property is a Single-family Dwelling

The purchase agreement in this case relates to a single-family dwelling the buyer intended to occupy. The evidence at trial showed the Bihlman property consists of a farmhouse that Susan intended to occupy. Were it not for Charlene's threat to evict her, Susan would have lived in the farmhouse continuously throughout the pendency of the sale until purchase completion. Rather than showing an intent to resell, the record shows Susan intended to preserve the Bihlman family's multigenerational occupancy of the property. Under Civil Code section 3387, this evidence supplied the *conclusive* statutory presumption that Susan was entitled to specific performance.

Charlene ignores the statutory presumption of Civil Code section 3387 even while discussing neighboring statutory provisions. As a general rule of statutory interpretation, a specific statute controls over a general provision. (*Arterberry v. County of San Diego* (2010) 182 Cal.App.4th 1528, 1536.) Civil Code section 3387 specifically addresses sales of single-family dwellings and thus controls over statutes providing specific performance is *a* remedy (Civ. Code, § 3384), addressing mutuality of remedies for contracts in general (Civ. Code, § 3386), providing exemptions to specific performance

not relating to sale of single-family dwellings (Civ. Code, § 3390), and parties exempted from specific performance (Civ. Code, § 3391).

We reject Charlene's attempt to avail herself of Civil Code section 3391, case (2), by casting herself as the victim of an unfair contract. Charlene's argument glosses over key facts: The sale of the Bihlman property was initiated by Charlene. Charlene drafted the purchase agreement without help or input from Greg or Susan. The price was proposed by Charlene. Charlene proposed the price for the property after she received an appraisal on the property. She also had such a clear understanding of the property's value that she drafted an agreement so detailed it noted damage "due to the lack of flashings on the window sills of the South wall" and damage caused by woodpeckers would be repaired at buyers' expense in exchange for "a[n] antique cedar chest." Through the purchase agreement, Charlene asked for and received what she wanted. (*O'Donnell v. Lutter* (1945) 68 Cal.App.2d 376, 379, 384 [holding that a sale of real property was fair and had adequate consideration where owner set the price, even at a discounted rate based on fact parties had been "very good friends" prior to the sale].) It was not unfair because Charlene herself stated what she wanted.

We also dismiss Charlene's assertion that consideration was inadequate. In consideration of the Bihlman property and a cedar chest, Susan and Greg were to pay $165,000 and take the farmhouse in "as-is" condition. " 'A consideration of one dollar is ordinarily sufficient to support a contract at law.' " (*Abers v. Rounsavell* (2010) 189 Cal.App.4th 348, 362 [holding that $1 constituted adequate consideration for a 75-year ground lease that included a clubhouse, swimming pool, and recreation center in Santa Ana], quoting *Chrisman v. Southern Cal. Edison Co.* (1927) 83 Cal.App. 249, 254.) The consideration in this case was more than adequate.

III

Profits from Walnut Crops for the Years 2013 to 2015

Charlene argues the trial court erred in awarding to Susan all of the profit from the walnut crops during the period from 2013 to 2015 because a profit-sharing agreement entitled her to half the profits. In so arguing, Charlene suggests the trial court was biased against her on the basis of her relationship with Georgene. The insinuation of bias is refuted by the record, which reveals neither discriminatory animus nor error by the trial court.

A.

Crops Ordinarily Pass with the Property

It has long been established that the sale of real property includes crops growing on the land unless a written contract expressly exempts the crops from the sale. "[I]n the absence of such a written reservation a growing crop passes with the realty." (*Smith v. Baker* (1950) 95 Cal.App.2d 877, 882 (*Smith*); *Simpson v. Ferguson* (1896) 112 Cal. 180, 184.) Consequently, the purchaser of real property ordinarily receives all crops with the land.

When the purchaser of land succeeds in obtaining the real property through the remedy of specific performance, the purchaser "is entitled to an allowance for what he [or she] has lost by reason of the vendor's delay in conveying the property." (*Bravo v. Buelow* (1985) 168 Cal.App.3d 208, 213 (*Bravo*).) " 'Since the time for performance has passed, the court relates that performance back to that date, by treating the parties as if the change in ownership had taken place at that time. Thus the buyer is entitled to the rents *and profits from the time the contract should have been performed*, and the seller is entitled to an offset for the interest on the purchase money which he [or she] would have received had the contract been performed.' " (*Id.* at p. 213, quoting *Hutton v. Gliksberg* (1982) 128 Cal.App.3d 240, 248, italics added.)

B.

The Purchase Agreement

We reject Charlene's unsupported assertion that the 2007 oral agreement regarding walnut profits survived the sale of the real property pursuant to the written purchase agreement. The purchase agreement drafted by Charlene for the sale of the Bihlman property did not expressly reserve any of the profits from the walnut crops growing on the property. Consequently, the purchase agreement effectively cancelled the earlier oral agreement between Georgene on the one hand and Greg and Susan on the other. (*Bravo, supra,* 168 Cal.App.3d at p. 213.) The written agreement transferred the entirety of the Bihlman property including the land, farmhouse, *and* walnut crop.

Because the sale under the purchase agreement and extensions of time agreed upon by the parties should have been completed in early 2013, Susan was entitled to the lost profits from the walnut crops during the time she would have owned the entirety of the property. (*Bravo, supra,*168 Cal.App.3d at p. 213; *Smith, supra,* 95 Cal.App.2d at p. 882.) As a corollary, Charlene was entitled to deductions for the costs of producing the crop so that she was liable only for the net profits lost during the time she wrongfully delayed the completion of the sale of the Bihlman property.

In the trial court, the parties filed a stipulation regarding the value of the walnut crop. In pertinent part, the stipulation stated Charlene estimated the net profit for the relevant period to be "$16,202.00" and emphasized she did not believe she owed anything to Susan. Conversely, the stipulation noted Susan argued Charlene included improper costs of growing. Susan asserted the "total net crop income of $26,286.00" should be awarded to her for lost profits. In its statement of decision, the trial court awarded to Susan "the amount of $26,282, with a credit or offset of $14,732.46, for a net award to Plaintiff in the amount of $11,549.54." The credit or offset was to reimburse Charlene for property taxes paid and the cost of a new roof installed in mid-2013.

The statement of decision contains no hint of discrimination against Charlene with respect to her relationship with Georgene. Notably, the trial court calculated a lower net profit for the period than even Charlene had asserted. That the trial court awarded the net profits to Susan comported with the rule that written contracts for sale of land include crops growing on the realty. Thus, the trial court properly awarded the profits from the walnut crops to Susan for the time period when she would have owned the entirety of the Bihlman property but for Charlene's breach of the purchase agreement.

IV

Attorney Fees

Charlene argues the trial court abused its discretion in awarding attorney fees to Susan. We deem the argument forfeited for lack of citation to the appellate record.

An appellant bears the burden of demonstrating error by providing citations to the portion of the record in which the error is manifest. (*In re S.C.* (2006) 138 Cal.App.4th 396, 406.) "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made." (*Ibid.*) In such an instance, the argument may be deemed forfeited. (*Id.* at p. 407.)

Charlene's opening brief contains only two citations to the record in support of her challenge to the trial court's award of attorney fees. The first citation refers to a page on which the trial court noted only that it did not order a court reporter for the hearing on the attorney fee motion. The second citation is to the conclusion page of Charlene's motion to tax costs. This citation does not meet Charlene's burden because "[t]he appellant may not simply incorporate by reference arguments made in papers filed in the trial court, rather than briefing them on appeal." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656.) For lack of adequate record support, the argument challenging the award of attorney fees is deemed forfeited.

DISPOSITION

The judgment and order awarding attorney fees are affirmed. Susan Bihlman shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

/s/
HOCH, J.

We concur:

/s/
ROBIE, Acting P. J.

/s/
MURRAY, J.